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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YVONNE DALTON, DIAN GARZA, ARMINDA
 GUZMAN, SHARON HUGHEN, ETELVINA
 SALGADO, HECTOR MIGUEL SALGADO, and
 REFUGIO SANCHEZ, individually, on behalf of
 all others similarly situated and on behalf of the
 general public,

Plaintiffs,

v.

LEE PUBLICATIONS, INC., a Delaware
 Corporation, dba NORTH COUNTY TIMES, and
 DOES 1 through 50, inclusive,

Defendants.

Case No.: 08-CV-1072 BTM NLS

Hon. Barry Ted Moskowitz
 Dept: 15

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR VIOLATIONS
 OF THE CALIFORNIA LABOR
 CODE AND CALIFORNIA
 BUSINESS & PROFESSIONS
 CODE §§ 17200 ET SEQ.**

JURY TRIAL DEMANDED

Plaintiffs, YVONNE DALTON, DIAN GARZA, ARMINDA GUZMAN, SHARON
 HUGHEN, ETELVINA SALGADO, HECTOR MIGUEL SALGADO, and REFUGIO
 SANCHEZ (collectively "Plaintiffs") on their own behalf and on behalf of all others similarly
 situated allege the following based upon personal knowledge as to themselves and their own acts,
 and on information and belief as to all other matters, based upon, *inter alia*, the investigation
 conducted by and through their attorneys:

First Amended Complaint, Dalton v. Lee Publications Case No. 08-CV-1072 BTM NLS

I.
INTRODUCTION

1
2
3 1. This is a class action brought on behalf of persons presently and formerly engaged
4 as newspaper home delivery carriers by Defendant LEE PUBLICATIONS, INC., doing business
5 in San Diego County as NORTH COUNTY TIMES. For at least four years prior to the filing of
6 this action and through the present (the "Class Period"), Plaintiffs are informed and believe that
7 the Defendants violated the California Labor Code and applicable California Wage Orders by
8 improperly classifying Plaintiffs and Class Members as "independent contractors" when they
9 should legally be classified as employees. As a result of this improper categorization, the
10 Defendants has caused harm to Plaintiffs and Class Members as fully set forth below.

11 2. Plaintiffs, on their behalf and on behalf of all Class Members, bring this action
12 pursuant to Labor Code §§201-204, 221, 223, 226, 226.7, 1174, 1194, 1197, 2802, and 3751, and
13 California Wage Order No. 1-2001 (8 Cal. Code Reg., §11010), seeking unpaid regular and
14 overtime wages, unpaid rest break and meal period compensation, reimbursement of all illegal
15 deductions made from their wages, payment of all wages and tips earned, reimbursement of
16 expenses and losses incurred by them in discharging their duties, payment of a minimum wage to
17 all Class Members who failed to receive a minimum wage for all hours worked in each payroll
18 period, penalties and reasonable attorneys' fees and costs.

19 3. Plaintiffs, on behalf of themselves, as a class, and on behalf of the general public,
20 pursuant to Business & Professions Code §§17200-17208, also seek injunctive relief, restitution,
21 and disgorgement of all wages owed Plaintiffs and Class Members by the Defendants due to their:
22 (1) failure to pay hourly and overtime wages, tips and compensation for rest and meal periods
23 due; (2) making illegal deductions from their wages; (3) failure to pay them all wages earned; (4)
24 failure to reimburse them for expenses and losses incurred in discharging their duties; and (5)
25 failure to a pay minimum wage to each of them for all hours worked in each payroll period.

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II.
JURISDICTION AND VENUE

4. Pursuant to Fed. R. Civ. P. 4(k)(1)(A) , this Court has personal jurisdiction over each of the defendants because defendants either reside or have their principal place of business in this judicial district, or pursuant to the California "long-arm" statute, Cal. Civ. Proc. Code §410.10, each of the defendants has maintained deliberate minimum contacts with the State of California and/or each of the defendants' activities in this State has been so continuous and systematic that such defendants may be said to be present here.

5. This Court has original jurisdiction of this action pursuant to provisions of the Class Action Fairness Act of 2005, specifically 28 U.S.C. §1332(d)(2). The amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a class action in which at least one class member is a citizen of a State different from that of the Defendant.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1441, 1446(a) and 84(c)(3). This action was originally brought in the Superior Court of the State of California, County of San Diego, and Plaintiffs reside in the County of San Diego, California. Venue is also properly laid in this District pursuant to 18 U.S.C. §1965 and 28 U.S.C. §1391. The named defendant is a newspaper publishing company which is doing business in San Diego County. In addition, the unlawful acts alleged herein caused, and are causing, harm to Plaintiffs and other individuals in San Diego County presently or formerly engaged by the defendants as newspaper home delivery carriers.

III.
PARTIES

A. Plaintiffs

7. Plaintiffs YVONNE DALTON, DIAN GARZA, ARMINDA GUZMAN, SHARON HUGHEN, ETELVINA SALGADO, HECTOR MIGUEL SALGADO, and REFUGIO SANCHEZ are individuals residing in San Diego County, California. Plaintiffs DIAN GARZA, ARMINDA GUZMAN, SHARON HUGHEN, ETELVINA SALGADO, HECTOR MIGUEL SALGADO, and REFUGIO SANCHEZ are currently employed by the Defendants as newspaper home delivery carriers in San Diego County, California. Plaintiff YVONNE DALTON is a former

1 newspaper home delivery carrier for the Defendant, and during her term of employment, was
2 employed by the Defendants in San Diego County, California. Plaintiffs are subject to Title VIII
3 of the California Code of Regulations, §11010, and related Industrial Welfare Commission
4 (“IWC”) Wage Order No. 1-2001.

5 8. Plaintiffs, and each of them, will adequately represent the interests of the class and
6 will vigorously participate in this matter as a class action when certified. Plaintiff class
7 representatives have further secured legal counsel experienced in both class action and wage and
8 hour litigation, who will likewise adequately represent the class.

9 **B. Defendants**

10 9. On information and belief, Plaintiffs allege that Defendant LEE PUBLICATIONS,
11 INC. (“LEE”) is incorporated under the laws of the State of Delaware, with its corporate
12 headquarters located in Davenport, Iowa. LEE owns and operates local newspaper publishing
13 businesses across the country. Plaintiffs are informed and believe, and thereon allege that, during
14 the past four years (the “Class Period”), Defendant LEE has been doing business as the NORTH
15 COUNTY TIMES (“NCT”), a business entity that publishes nine daily zoned editions geared to
16 provide North County residents with news pertinent to readers' interests and their respective
17 communities. NCT’s principal place of business is located in San Diego County at 207 E.
18 Penn Avenue, Escondido, California.

19 10. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
21 unknown to Plaintiffs who therefore sue the Defendants by such fictitious names under
22 Code of Civil Procedure §474. Plaintiffs are informed and believe, and based thereon
23 allege, that each of the Defendants designated herein as a Doe is legally responsible in
24 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of Court to
25 amend this Complaint to reflect the true names and capacities of the Defendants
26 designated hereafter as Does when such entities become known.

27 11. Plaintiffs are informed and believe and based thereon allege that each
28 Defendant acted in all respects pertinent to this action as the agent of the other

Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent thereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV.
FACTUAL BACKGROUND

12. Defendant LEE PUBLICATIONS, INC, does business as the NORTH COUNTY TIMES, a newspaper of general circulation operating primarily in the San Diego County area of Southern California. Most customers of the Defendants' business receive home delivery of newspapers on a daily basis which are printed and distributed under the auspices of the Defendant, doing business as the NORTH COUNTY TIMES.

13. The Defendants own and operate common distribution facilities located in San Diego County in order to distribute its newspapers. Plaintiffs and Class Members perform significant work at these distribution centers, including, but not limited to, folding and/or inserting various inserts, sections, pre-prints, samples and supplements, as well as other products provided by the Defendants at the North County Times' warehouses and common distribution facilities into plastic bags they are required to purchase from the Defendant.

14. The Defendants also utilize computer systems which prepare instructions to Plaintiffs and Class members on exactly how and when to deliver newspapers. The Defendants further have the ability to terminate employment relations of the Plaintiffs and Class Members.

15. Other than personal vehicles, there is a lack of investment in independent equipment by the Plaintiffs and Class Members, and no special education, certification or licensing (other than having a valid driver's license) is required to perform Plaintiffs' and Class Members' duties.

16. The newspaper delivery performed by Plaintiffs and Class Members is an integral part of the business enterprise of the Defendant.

17. The economic realities of Class Members' relationship with the Defendants establishes that Plaintiffs and Class Members, under conventional legal and economic

1 tests, are now, and have been, employees of the Defendants and not independent
2 contractors.

3 18. The Defendants exercise and have exercised complete control over the
4 Plaintiffs and Class Members' performance of their duties.

5 19. Because Plaintiffs and Class Members are employees, not independent
6 contractors, numerous California Labor Code violations have occurred and are occurring
7 on an ongoing basis, including defendants' failure to authorize and allow them meal
8 breaks and rest breaks, failure to pay them overtime for the seventh day of work required
9 of them each work week because they are required deliver newspapers seven days a week,
10 failure to provide proper payroll withholding treatment, failure to pay them tips made by
11 defendants' customers, and failure to provide other protections of Labor Code §2802 and
12 Labor Code §221, all of which Plaintiffs and Class Members are entitled to as valid, non-
13 exempt, employees under California law.

14
15 **V.**
CLASS ACTION ALLEGATIONS

16 20. Plaintiffs bring this action on behalf of themselves and all others similarly
17 situated as a class action pursuant to Federal Rule of Civil Procedure 23. The class is
18 composed of and defined as follows:

19 "All persons presently and formerly engaged as newspaper home delivery
20 carriers by LEE PUBLICATIONS, INC. and for the North County Times
21 newspaper in the State of California during the period from and including
22 April 18, 2004, through and including the date of trial set for this action, and
23 who, as a condition of such engagement, signed a written agreement for the
24 home delivery of newspapers, which categorized them as independent
25 contractors and not employees."

26 **A. Numerosity**

27 21. The members of the Class, as defined above, are so numerous that individual
28 joinder of all members is impractical. While the exact number of Class Members is

1 currently unknown, Plaintiffs are informed and believe that the class includes
2 approximately 800 members. Moreover, all Class Members are objectively ascertainable
3 because each one of them signed, and was subject to, the common written contract required
4 by the Defendants in order to become a newspaper home delivery carrier.

5 **B. Common Questions Predominate**

6 22. Common questions of law and fact exist as to all Class Members and
7 predominate over any questions that affect individual Class Members. The common
8 questions of fact include, but are not limited to, the following facts relevant to the
9 determination of the primary issue, i.e., whether Plaintiffs and Class Members were
10 improperly classified as “independent contractors” rather than “employees,” and the extent
11 to which Defendants’ treatment of them violated California Labor Laws:

- 12 a. Whether the Defendants require Plaintiffs and each individual Class
13 Member to execute a written agreement categorizing them as
14 “independent contractors” as a condition of engaging them as
15 newspaper home delivery carriers;
- 16 b. Whether the Defendants require Plaintiffs and each individual Class
17 Member to be present at the Defendants’ place of business at
18 specific times to perform a significant percentage of their duties at a
19 warehouse prior to distribution, including handling the Defendant-
20 provided inserts, samples, sections, and other products provided by
21 the Defendant;
- 22 c. Whether the Defendants train and instruct Plaintiffs and each
23 individual Class Member on how to deliver the newspapers,
24 including specific route driving directions prepared by a computer
25 program that directs Class Members on exactly how to execute their
26 duties;
- 27 d. Whether the Defendants monitor the Plaintiffs’ and each individual
28 Class Member’s performance and compliance with delivery time

1 requirements established by the Defendants and punish them for
2 complaints received from customers and failure to meet the delivery
3 time requirements;

4 e. Whether Plaintiffs and Class Members enjoy any upside profit
5 potential in connection with their duties or bear the burden of poor
6 collections from newspaper subscribers on their routes or instead
7 have set periodic deductions from their pay based on a schedule set
8 by the Defendants, independent of collections;

9 f. Whether Plaintiffs and Class Members are paid monthly according
10 to an existing formula;

11 g. Whether the job responsibilities of Plaintiffs and Class Members do
12 not require any special education, certification or licensing (other
13 than a valid driver's license);

14 h. Whether the relationship between the Plaintiffs and Class Members
15 and the Defendants is relatively permanent and long term, with
16 many Class Members working for the Defendants for years;

17 i. Whether the delivery of the Defendants' newspapers is a critical and
18 integral part of its business;

19 j. Whether Plaintiffs and Class Members collect money from
20 newspaper subscribers and take part of the proceeds to purchase
21 papers from the Defendants wholesale, or whether the Defendants
22 collect the money from newspaper subscribers and then pay
23 Plaintiffs and Class Members from the collected proceeds;

24 k. Whether Plaintiffs and Class Members have any ownership interest
25 in the newspaper routes they are contractually required to service;

26 l. Whether the Plaintiffs and Class Members and required by the
27 Defendants, pursuant to the uniform written delivery agreements, to
28 sell new home delivery subscriptions;

- m. Whether or not Plaintiffs and Class Members had the authority to delegate performance of their responsibilities under the uniform written delivery agreements without advising the Defendants;
- n. Whether the uniform written delivery agreements required Plaintiffs and Class Members to work seven days a week;
- o. Whether the Defendants authorized and allowed rest breaks to Plaintiffs and Class Members for work periods over three and one-half hours and meal breaks for work periods over five hours; and
- p. Whether Defendants compensated Plaintiffs and Class Members for the required use of their personal automobiles for completion of their newspaper deliveries.

23. Common questions of law that exist include the following:

- a. Whether the Class Members, who each have the same job and contract with the Defendants as the representative Plaintiffs, have been improperly categorized by the Defendants as “independent contractors,” and instead should be properly categorized as non-exempt employees;
- b. Whether the benefits and protections of the California Labor Code apply to Plaintiffs and Class Members when they are properly characterized as non-exempt employees;
- c. Whether Plaintiffs and each Class Member is entitled to remedial relief in the form of compensation for violations of the Labor Code as set forth hereinafter;
- d. Whether the Class Members are entitled to damages, penalties, interest, and attorneys’ fees and costs, as provided by the Labor Code and Wage Order No. 1-2001; and
- e. Whether Class Members are entitled to injunctive relief to enjoin further violations of the Labor Code and Wage Order No. 1-2001.

1 **C. Typicality**

2 24. Plaintiffs' claims are typical of the claims of the Class Members in that Plaintiffs
3 and the Class Members performed identical duties for the Defendants and were improperly
4 classified as independent contractors, when they should have been classified as employees. All
5 Plaintiffs and Class Members sustained similar damages arising out of the Defendants' common
6 course of conduct, which is in violation of laws and regulations governing the compensation of
7 employees.

8 **D. Adequacy of Representation**

9 25. Plaintiffs will fairly and adequately represent and protect the interests of the
10 members of the Class. Plaintiffs have no interests adverse to interests of the other Class Members.
11 Proposed class co-counsel, the LAW OFFICES OF GREER & ASSOCIATES, APC, and the
12 LAW OFFICES OF MARCY E. KAYE, are competent and experienced in litigation including
13 substantial experience with class action litigation and wage and hour cases.

14 **E. Superiority of Class Action**

15 26. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all members of the class is impractical and
17 questions of law and fact common to the Class predominate over any questions affecting only
18 individual Class Members. Class action treatment will permit a large number of similarly situated
19 persons to prosecute their claims in a single forum, simultaneously and efficiently for both the
20 parties and the court system, without the unnecessary duplication of effort and expense that many
21 individual actions would require. Furthermore, as the damages suffered by many individual
22 members of the class may be relatively small, the expenses and burden of individual litigation
23 would make it difficult or impossible for individual members of the class to redress the wrongs
24 done to them, while an important public interest will be served by addressing the matter as a class
25 action. The cost to the court system of adjudicating each individual claim would be substantial.
26 Individualized litigation would also present the potential for inconsistent or contradictory
27 judgments.

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**FIRST CAUSE OF ACTION
(Against All Defendants)**

**Failure to Pay Minimum Wage, Hourly Wages, and Overtime Wages
(Labor Code §§1194 and 1197)**

27. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-26, supra, as though fully set forth herein.

28. During the Class Period, the Defendants had a consistent and common policy of failing to pay minimum wages, contracted hourly wages, and overtime wages to newspaper home delivery carriers, including Plaintiffs and Class Members, and failing to provide itemized records reflecting all hours worked by said employees, in violation of California state wage and hour laws.

29. During the Class Period, the Defendants had a consistent and common policy of requiring newspaper home delivery carriers, including Plaintiffs and Class Members, to work for the first eight hours on the seventh consecutive day of work in a workweek without compensating said employees at the rate of one and one-half of said employees' regular rate of pay, and thus willfully violating Labor Code §§1194 and 1197.

30. As a proximate result of the unlawful acts of the Defendants, Plaintiffs and the Class Members have been damaged in an amount according to proof at the time of trial and are entitled to recovery of such amount, plus interest thereon, and attorneys' fees and costs, under Labor Code §§1194.

**SECOND CAUSE OF ACTION
(Against All Defendants)**

Failure to Provide Proper Meal Periods, or Compensation in Lieu Thereof (Labor Code §§226.7, 512; IWC Orders; Cal. Code Regs., Title 8 §11010)

31. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-30, supra, as though fully set forth herein.

32. By its failure to authorize and allow Plaintiffs and the other newspaper home delivery carriers thirty minute meal periods for days on which they worked in excess of five hours, and by its failure to provide in-lieu compensation, the Defendants willfully violated the provisions of Labor Code §512 and the applicable Wage Orders of the California Department of

1 Labor.

2 33. By failing to keep time records required by Labor Code §§226 and 1174(d), the
3 Defendants have made it difficult to calculate the unpaid meal period compensation due to
4 Plaintiffs and other newspaper home delivery carriers.

5 34. As a proximate result of the Defendants' unlawful acts, Plaintiffs and other
6 newspaper home delivery carriers have been deprived and are each entitled to one hour of
7 additional pay per day for each such violation as provided for by Labor Code §226.7 and IWC
8 Wage Orders Nos. 1-1998, 1-2000, and 1-2001, plus interest thereon, attorneys' fees and costs.

9
10 **THIRD CAUSE OF ACTION**
11 **(Against All Defendants)**

12 **Failure to Provide Rest Breaks, or Compensation in Lieu Thereof (Labor Code §§226.7;
IWC Order Nos. 1-1998, 1-2000, 1-2001; Cal. Code Regs., Title 8, §11010)**

13 35. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-34,
14 supra, as though fully set forth herein.

15 36. By its failure to provide rest breaks for every four hours or major fraction thereof
16 worked per day by the newspaper home delivery carriers, including Plaintiffs, and by its failure to
17 provide in-lieu compensation for such unprovided rest breaks, as alleged above, the Defendants
18 willfully violated the provision of Labor Code §226.7 and IWC Wage Order Nos. 1-1998, 1-2000,
19 and 1-2001. Plaintiffs and other newspaper home delivery carriers did not willfully waive rest
20 periods through any mutual consent with the Defendant.

21 37. By failing to keep time records required by Labor Code §§226 and 1174(d), the
22 Defendants have made it difficult to calculate the unpaid rest period compensation due to
23 Plaintiffs and other newspaper home delivery carriers.

24 38. As a proximate result of the Defendants' unlawful acts, Plaintiffs and other
25 newspaper home delivery carriers have been deprived and are each entitled to one hour of
26 additional pay per day for each such violation as provided for by Labor Code §226.7 and IWC
27 Wage Orders Nos. 1-1998, 1-2000, and 1-2001, plus interest thereon, attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Against All Defendants)

**Failure to Reimburse for Reasonable Business Expenses (Violation of Labor Code §2802;
Wage Order 1-2001, Cal. Code Regs., Title 8 §11010 Sec. 8)**

39. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-38, supra, as though fully set forth herein.

40. California Labor Code §2802(a) provides in pertinent part that:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though

unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Furthermore, Wage Order 1-2001, Section 8, provides that:

“No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.”

41. During the Class Period, Plaintiffs and the Class Members incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of the Defendants as follows:

42. Plaintiffs and the Class Members were required by the Defendants to provide their own vehicles in order to deliver the Defendants’ newspapers, and in connection with provision of their own vehicles and the delivery of the Defendants’ newspapers, the Plaintiffs and the Class Members necessarily incurred expenditures for gasoline, maintenance, and insurance. As well, they incurred losses associated with wear and tear to their vehicles. On information and belief, none of these expenditures or losses were reimbursed by the Defendants to Plaintiffs and the Class Members, with the exception of periodic “Temporary Gas Credits.”

43. The Defendants routinely made deductions from the Plaintiffs’ and Class Members’ wages for each alleged complaint it received from its customers for, among other things, damaged papers, wet papers, and allegedly undelivered papers. Even though most, if not

1 all, of these complained of damages and losses were beyond the Plaintiffs' and Class Members'
2 control, or due to the simple negligence of the Plaintiffs and Class Members, the Defendants
3 nevertheless wrongfully and willfully made deductions from the Plaintiffs' and Class Members'
4 wages of up to \$5.00 per complaint and for "redelivery fees." The Defendants made said
5 deductions as part of a wrongful attempt to make the Plaintiffs and Class Members insurers of the
6 Defendants' merchandise, which purpose is prohibited by California law. Said deductions were
7 made by the Defendants as part of a deliberate subterfuge that was designed, constructed,
8 implemented and administered to circumvent the clear prohibitions of California case law and
9 IWC Wage Order 1-2001 (8 C.C.R. §11010).

10 44. The Defendants also required Plaintiffs and Class Members to pay "Distribution
11 Center Charges" and to purchase plastic bags used to hold newspapers together and to protect the
12 newspapers in inclement weather. The Defendants routinely made deductions for plastic bags
13 from the wages of the Plaintiffs and the Class Members in contravention of IWC Wage Order No.
14 1-2001 §9(B) (8 C.C.R. §11010).

15 45. The Defendants routinely deducted from the wages of Plaintiffs and the Class
16 Members an amount for the premium on insurance to cover accidental injury to them arising
17 during the course of their employment with the Defendant, which insurance constitutes workers'
18 compensation insurance. Said deductions violated Labor Code §3751(a).

19 46. The Defendants routinely deducted from the wages of Plaintiffs and the Class
20 Members an amount for premiums on surety bonds to secure the performance of the Plaintiffs and
21 the Class Members of their employment duties. Said deductions violated Labor Code §401 which
22 provides that if a bond of an employee is required by an employer, the cost of the bond shall be
23 paid by the employer.

24 47. The Defendants routinely provided Plaintiffs and the Class Members with
25 newspapers in excess of the number that was needed to complete their respective delivery routes,
26 and then the Defendants routinely made deductions from the Plaintiffs' and Class Members'
27 wages of \$0.5-\$0.15 for each and every extra newspaper and charged Class Members for their
28 own mandatory subscription to the newspaper. These deductions were made even though the extra

1 newspapers were given to the Plaintiffs and Class Members by the Defendants as a result of its
 2 own mistake. These deductions were made regardless of whether the Plaintiffs and Class
 3 Members returned the extra newspapers to the Defendant. The Defendants made said deductions
 4 as part of a wrongful attempt to make the Plaintiffs and Class Members insurers of the
 5 Defendants' merchandise, which purpose is prohibited by California law. Said deductions were
 6 made by the Defendants as part of a deliberate subterfuge that was designed, constructed,
 7 implemented and administered to circumvent the clear prohibitions of IWC Wage Order No. 1-
 8 2001 (8 C.C.R. §11010), which provides that no employer shall make any deduction from the
 9 wages of an employee for any loss of or damage to equipment, unless it can be shown that the loss
 10 or damage was caused by a dishonest or willful act, or by the gross negligence, of the employee.

11 48. Plaintiffs are informed and believe that pursuant to California Labor Code §2802
 12 and Wage Order 1-2001, Section 8, Plaintiffs and the class members are entitled to recover their
 13 unreimbursed expenditures and losses, interest, and attorneys' fees and costs, in amounts to be
 14 proven at the time of trial.

15 **FIFTH CAUSE OF ACTION**
 16 **(Against All Defendants)**

17 **Unlawful Withholding of Wages Due**
(Labor Code §221, 223; Wage Order 1-2001 Cal. Code Regs., Title 8, §11010, Section 9)

18 49. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-48,
 19 supra, as though fully set forth herein.

20 50. The illegal deductions charged by the Defendants against the wages of the
 21 Plaintiffs and Class Members, as described in the Fourth Cause of Action, supra, constituted a
 22 device utilized by the Defendants to pay Plaintiffs and Class Members less than their stated
 23 wages. Those illegal deductions include: (1) deductions made for customer complaints about
 24 alleged damages not caused by a dishonest or willful act or by the gross negligence of Plaintiffs
 25 and the Class Members; (2) deductions made for "Distribution Center Charges" and plastic bags
 26 required by the Defendants as necessary to the performance of the Plaintiffs' and Class Members'
 27 duties; (3) deductions made for the cost of Workers' Compensation insurance; (4) failure to pay
 28 earned tips; (5) deductions made for surety bonds; and (6) deductions made for "loss" of excess

1 newspapers, which loss was not caused by a dishonest or willful act or by the gross negligence of
2 Plaintiffs and the Class Members.

3 51. Said illegal deductions amounted to an unlawful withholding of wages due
4 Plaintiffs and the Class Members and constituted a violation of Labor Code §221 by the
5 Defendant. As a proximate result of the unlawful acts of the Defendant, Plaintiffs and the Class
6 Members have been damaged in an amount according to proof at the time of trial. Under Labor
7 Code §218.5, Plaintiffs and the Class Members are entitled to recover their attorneys' fees and
8 costs, in an amount to be proven at the time of trial. Plaintiffs and the Class Members are further
9 entitled to recover interest on all due and unpaid wages from the date that the wages were due and
10 payable, pursuant to Labor Code §218.6.

11
12 **SIXTH CAUSE OF ACTION**
13 **(Against All Defendants)**

14 **Failure to Provide Itemized Wage Statements**
15 **(Violation of IWC Wage Order No. 1-2001(7) and Labor Code §226, §226.3)**

16 52. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-51,
supra, as though fully set forth herein.

17 53. California Labor Code §226(a) provides in pertinent part:

18 "Every employer shall, semi-monthly or at the time of each payment of wages,
19 furnish each of his or her employees, either as a detachable part of the check, draft,
20 or voucher paying the employee's wages, or separately when wages are paid by
21 personal check or cash, an itemized statement in writing showing (1) gross wages
22 earned, (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of
24 overtime under subdivision (a) of Section 515 or any applicable order of the
25 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
26 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
27 deductions, provided, that all deductions made on written orders of the employee
28 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive

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1 dates of the period for which the employee is paid, (7) the name of the employee
2 and his or her social security number, (8) the name and address of the legal entity
3 that is the employer, and (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the
5 employee. The deductions made from payments of wages shall be recorded in ink
6 or other indelible form, properly dated, showing the month, day, and year, and a
7 copy of the statement or a record of the deductions shall be kept on file by the
8 employer for at least three years at the place of employment or a central location
9 within the State of California.”

10 54. Similarly, IWC Wage Order No. 1-2001 (8 C.C.R. §11010), paragraph (7)(B)
11 requires employers, semi-monthly or at the time of each payment of wages, to furnish each
12 employee with an itemized statement in writing showing, among other things, all deductions. The
13 Defendants’ failure to provide such itemized statements to each and every Plaintiff and Class
14 Member is also a violation of IWC Wage Order No. 1-2001.

15 55. During the Class Period, the Defendants routinely failed to provide to each and
16 every one of the Plaintiffs and the Class Members, at the time of each payment of wages, an
17 itemized statement in writing showing the total hours worked by the employee. The Defendants’
18 failure to provide itemized statements of hours worked to the Plaintiffs and the Class Members
19 was knowing and intentional and was in violation of Labor Code §226(a). In addition to not
20 stating the hours worked, the monthly statements Defendants provided to Class Members also
21 violated the semi-monthly requirement of Labor Code §226(a).

22 56. Plaintiffs and the Class Members suffered injuries as a result of the knowing and
23 intentional failure of the Defendants to comply with Labor Code §226(a), and IWC Wage Order
24 No. 1-2001, in that the Defendants’ failure to provide each and every one of them with an
25 itemized wage statement made it impossible for the Plaintiffs and the Class members to be aware
26 that their wages fell below the statutory hourly minimum wage and that they were due overtime
27 pay. Plaintiffs contend that the Defendants’ failure to provide the Plaintiffs and the Class
28 Members with itemized wage statements was a deliberate subterfuge that was implemented and

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1 administered to hide the fact that the Defendants were failing to pay all wages earned, and, in
 2 certain instances, was paying Plaintiffs and the Class Members less than the statutory minimum
 3 wage.

4 57. Plaintiffs are informed and believe that the Defendants' knowing and intentional
 5 failure to furnish Plaintiffs and the Class Members with itemized wage statements violated Labor
 6 Code §226(a), as well as §(7)(b) of IWC Wage Order No. 1-2001. Labor Code §226(e) entitles
 7 Plaintiffs and the Class Members to recover the greater of their actual damages caused by the
 8 Defendants' violation of Labor Code §226(a), or \$50 for the initial pay period in which the
 9 violation occurred, and \$100 per employee for each violation in subsequent pay periods, not
 10 exceeding an aggregate penalty of \$4,000 per employee.

11
 12
 13 **SEVENTH CAUSE OF ACTION**
(Against All Defendants)

14 **Failure to Keep Accurate Payroll Records Showing Hours Worked**
 15 **Daily by Newspaper Home Delivery Carriers**
(Violation of Labor Code §1174(d) and IWC Wage Order No. 1-2001(7)(A))

16 58. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-57,
 17 supra, as though fully set forth herein.

18 59. California Labor Code §1174(d) requires an employer to keep at a central location
 19 in California or at the plant or establishment at which employees are employed, payroll records
 20 showing the hours worked daily by, and the wages paid to each employee. Plaintiffs are informed
 21 and believe that the Defendants willfully failed to make and keep such records for Plaintiffs and
 22 the Class Members.

23 60. IWC Wage Order No. 1-2001, paragraph (7)(A) requires that every employer shall
 24 keep accurate information with respect to each employee, including time records showing when
 25 each employee begins and ends each work period, the total daily hours worked by each employee,
 26 and the total hours worked in each payroll period, and applicable rates of pay. Plaintiffs are
 27 informed and believe that the Defendants failed to make and keep such records for Plaintiffs and
 28 the Class Members.

61. Plaintiffs are informed and believe that the Defendants' failure to keep payroll records and accurate employee information, as described above, violated Labor Code §1174(d) and IWC Wage Order No. 1-2001(7)(A).

62. Plaintiffs are informed and believe that the Defendants' failure to keep and maintain records and information, as described above, was willful, and Plaintiffs and the class members are therefore entitled to a civil penalty of \$500 for each Plaintiff and Class Member, pursuant to Labor Code §1174.5.

EIGHTH CAUSE OF ACTION
(Against All Defendants)

Waiting Time Penalties
(Labor Code §201, §202, and §203)

63. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-62, supra, as though fully set forth herein.

64. Sections 201 and 202 of the California Labor Code require employers to pay their employees all wages due within 72 hours of termination of employment. Plaintiffs are informed and believe that the Defendants willfully failed and refused to pay the final two weeks' wages of certain Plaintiffs and Class members who are former newspaper home delivery carriers of the Defendant, in violation of Labor Code §201 and 202.

65. Labor Code §203 provides that if an employer willfully fails to timely pay wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced. The penalty cannot exceed 30 days of wages.

66. As a consequence of the Defendants' willful conduct in not paying the final two weeks' wages to terminated employees, as described above, the affected Plaintiffs and Class Members are entitled to thirty days' wages as a penalty under Labor Code §203.

67. Pursuant to California Labor Code §218.5, Plaintiffs and the Class Members are entitled to recover attorneys' fees and costs in amounts to be proven at the time of trial, in addition to the damages described above. Plaintiffs and the Class Members are further entitled to

1 recover interest on all due and unpaid wages from the date that the wages were due and payable,
2 pursuant to Labor Code §218.6.

3
4 **NINTH CAUSE OF ACTION**
5 **UNFAIR BUSINESS PRACTICES**
6 **(Against All Defendants)**

7 **(Violation of Business & Professions Code §17200 et seq.)**

8 68. Plaintiffs, on behalf of themselves and all others similarly situated and on behalf of
9 the general public as appropriate, incorporate by reference the allegations set forth in paragraphs
10 1-67, supra, as though fully set forth herein, and further allege as follows:

11 69. Plaintiffs are informed and believe that the Defendants' improper classification of
12 Class Members as independent contractors and its unlawful failure to pay minimum, regular, and
13 overtime wages; its illegal failure to provide rest periods or in lieu compensation; its unlawful
14 deductions from the wages of Plaintiffs and Class Members; its unlawful failure to reimburse
15 Plaintiffs and Class Members for necessary expenses incurred in performing their jobs; its
16 unlawful failure to provide Plaintiffs and Class Members with itemized wage statements; and its
17 unlawful failure to pay wages to terminated employees constitute unlawful, unfair, and fraudulent
18 business practices, in violation of California Business & Professions Code §§17200, et seq.

19 70. California Labor Code §450 provides that no employer may compel or coerce any
20 employee to purchase anything of value from the employer. The Defendants' requirement that
21 Plaintiffs and the Class Members purchase plastic bags from the Defendants and pay
22 "Distribution Center Charges," which items were necessary for the performance of their jobs,
23 constituted a violation of Labor Code §450, and was thus an unlawful business practice.

24 71. The Defendants' failure to pay Plaintiffs and Class Members in a lawful manner as
25 set forth above and below is fraudulent and deceptive and constitutes an ongoing and continuous
26 unfair business practice within the meaning of Business and Professions Code §§17200 et seq.
27 Members of the public have been deceived in the past and will in the future continue to be
28 deceived by these continuous unfair business practices.

72. The illegal conduct alleged herein is continuing, and there is no indication that the
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1 Defendants will not continue such activity in the future. Plaintiffs allege that if the Defendants are
2 not enjoined from said illegal conduct, it will continue to fail to pay legal hourly and overtime
3 wages and will continue to fail to provide rest and meal periods or provide appropriate
4 compensation in lieu thereof.

5 73. Plaintiffs request that the court issue a preliminary and permanent injunction
6 prohibiting the Defendants from requiring Plaintiffs and Class Members to work without legal
7 hourly and overtime compensation and from continuing to fail to provide rest or meal periods
8 without appropriate compensation in lieu thereof.

9 74. Pursuant to Business & Professions Code §17203, Plaintiffs and the Class
10 Members are entitled to restitution of the amounts of the illegal deductions, unpaid minimum,
11 hourly and overtime wages, unpaid rest break and meal period, compensation, as well as
12 reimbursement of all necessary expenditures and losses incurred by Plaintiffs and the Class
13 Members in the discharge of their duties.

14 75. Plaintiffs are informed and believe, and thereon allege, that the Defendants are
15 unjustly enriched through its failure to pay legal hourly and overtime wages and rest and meal
16 period to Plaintiffs and other newspaper home delivery carriers. In addition, unless the Court
17 imposes an injunction against the Defendants requiring the Defendants to stop making illegal
18 deductions, pay all legal hourly and overtime wages, and reimburse for necessary expenditures
19 and losses, Plaintiffs, the Class Members, and the general public will suffer continuing and
20 irreparable harm and will have no adequate remedy at law. Plaintiffs bring this cause of action
21 individually and as members of the general public and as representatives of all of those who are
22 subject to the Defendants' unlawful acts and practices.

23 76. Accordingly, Plaintiffs and the Class Members request that the Court enter a
24 preliminary and permanent injunction requiring the Defendants to cease and desist from its
25 unlawful business practices and properly compute and pay to Plaintiffs and the Class Members
26 the amounts of all illegal deductions and unpaid wages and to reimburse them for the necessary
27 expenses and losses they incurred in carrying out their employment duties. Further, Plaintiffs and
28 Class Members request attorneys' fees and costs pursuant to California Code of Civil Procedure

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§1021.5 upon proof they have acted in the public interest.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiffs pray for judgment against the Defendant, as follows:

As to Causes of Action One through Eight:

1. For compensatory damages in an amount according to proof with interest thereon;
2. For economic and/or special damages, and/or liquidated damages in an amount according to proof with interest thereon;
3. For enforcement of all other rights and benefits Plaintiffs may be entitled to under law and a finding of employment status;

As to Causes of Action Six and Seven:

4. For penalties to the extent allowed by law, according to proof;

As to the Fourth Cause of Action:

5. For reimbursement of work related expenses (Labor Code §2802);

As to the Ninth Cause of Action:

6. That the Defendants be found to have engaged in unfair competition in violation of §17200, et. seq. of the California Business and Professions Code;
7. That the Defendants be ordered and enjoined to make restitution to Plaintiffs and other similarly situated employees due to their unfair competition, including disgorgement of wrongfully-withheld wages and tips, and unreimbursed expenses, pursuant to California Business and Professions Code §§17203 and 17204;
8. That Defendants be enjoined from continuing the illegal course of conduct alleged herein;
9. That Defendants further be enjoined to cease and desist from unfair competition in violation of §17200, et. seq. of the California Business and Professions Code;
10. That Defendants be enjoined from further restraint of trade or unfair competition;

As to All Causes of Action:

11. For attorneys' fees and costs of suit;

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1 12. Prejudgment interest; and

2 13. Such other relief as the Court deems just and proper.

3 Dated: August 27, 2008

4 Respectfully submitted,
5 GREER & ASSOCIATES, APC

6 _____
7 /S/
8 C. Keith Greer
9 Julie A. Lowell
10 Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all factual issues arising hereunder.

Dated: August 27, 2008

GREER & ASSOCIATES, APC

/S/
C. Keith Greer
Julie A. Lowell
Attorneys for Plaintiffs